



CLOSED CASE SUMMARY

ISSUED DATE: NOVEMBER 27, 2023

FROM: DIRECTOR GINO BETTS 
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2023OPA-0237

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	5.140 – Bias-Free Policing, 5.140-POL-2 Officers Will Not Engage in Bias-Based Policing	Not Sustained - Unfounded (Expedited)
# 2	5.001 – Standards and Duties 10. Employees Will Strive to be Professional	Not Sustained - Unfounded (Expedited)

This Closed Case Summary (CCS) represents the opinion of the OPA Director regarding the misconduct alleged and therefore sections are written in the first person.

EXECUTIVE SUMMARY:

Named Employee #1 (NE#1) responded to a collision in which the Complainant was involved. The Complainant alleged that NE#1 targeted her for DUI investigation because the Complainant is a Black female. The Complainant also alleged NE#1 was unprofessional by requiring her to complete a sobriety test at a precinct station in a dark room with two male officers.

ADMINISTRATIVE NOTE:

This case was designated as an Expedited Investigation. This means that OPA, with the Office of Inspector General's (OIG's) review and approval, believed that it could reach and issue recommended findings based solely on its intake investigation and without interviewing the involved employees. As such, OPA did not interview the involved employee in this case.

On July 10, 2023, OIG certified OPA's investigation as thorough, timely, and objective.

SUMMARY OF INVESTIGATION:

The Complainant filed three web-based complaints regarding this incident. In summary, the complaints described the collision investigation and the Complainant's belief that NE#1 was biased against her. The Complainant also described her discomfort with a sobriety test conducted by NE#1 and another male officer in a dark, precinct bathroom.

OPA opened an intake investigation. During the intake, OPA interviewed the Complainant. OPA also reviewed the three complaints, computer-aided dispatch (CAD) call report, incident report, and body-worn video (BWV).



In her OPA interview, the Complainant stated she called 9-1-1 due to a “road rage” incident. The Complainant stated that, after officers arrived, NE#1 asked her questions that she found odd. The Complainant also said NE#1 looked in her vehicle and checked on her dog. The Complainant alleged NE#1 knew about her previous criminal charge for being in possession of a vehicle that did not belong to her and that NE#1 was biased against her because of this. The Complainant also described NE#1 conducting field sobriety tests, which she believed she passed because NE#1 did not verbally tell her she failed. Instead, the Complainant said she was arrested for DUI and taken to the precinct station. The Complainant said NE#1 and another officer (Witness Officer #1 or WO#1) performed more sobriety tests, including one that NE#1 said needed to be performed in a dark room. The Complainant stated she was suspicious because NE#1 told her WO#1 would “watch over” the tests. The Complainant stated the test caused her so much fear that she started crying. The Complainant denied that the officers touched her or said or did anything inappropriate. Instead, the Complainant said she was scared because the test was not familiar to her and there were two male officers in a dark bathroom. The Complainant stated that she would have preferred a female officer be present, but she stated she neither requested, nor was offered, a female officer. The Complainant stated she was transported to a hospital for a blood draw and that, to her knowledge, her criminal case was dismissed.

OPA reviewed the CAD call report, incident report, and BWV—which recorded the officers’ interactions with the Complainant on-scene, at the precinct station, and while transporting the Complainant to the hospital and King County Jail. In summary, NE#1 and other officers responded to a 9-1-1 call in which the Complainant reported being followed by a male who was “road raging” and had brake-checked her. The other driver involved in the incident informed officers that the Complainant struck her vehicle from behind. The other driver’s rear license plate was bent, which she informed officers was not the case prior to the collision. NE#1 is an experienced DUI investigator and a Drug Recognition Expert who, on the date of this incident, had conducted about two-hundred fifty DUI investigations. NE#1 documented, and BWV corroborated, that the Complainant showed multiple signs of impairment on the scene, including during a Standard Field Sobriety Test. These signs included constricted pupils, high pulse, tremoring eyelids, swaying, abnormalities in her “walk-and-turn” and “one-leg-stand” tests, and missing three out of six hits in a “finger-to-nose” test. NE#1 also observed odd behavior in the Complainant, including crying, moments of anger, frantic speaking, and standing and sitting throughout the interaction.¹ Another officer on scene—a field training officer—agreed with NE#1 that the Complainant was showing signs of impairment. NE#1 listed both the Complainant and the other driver as “Black or African American” females in his incident report. The Complainant was arrested.

At the precinct station, the Complainant consented to NE#1 conducting Drug Recognition Tests on her. These were recorded on BWV and observed by WO#1, an experienced Drug Recognition Expert. NE#1 explained the tests to the Complainant, was professional and calm during the tests, and explained the dark room test while administering it.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

5.140 - Bias-Free Policing, 5.140-POL-2 Officers Will Not Engage in Bias-Based Policing

The Complainant alleged NE#1 was biased against her due to her race, gender, or prior arrest.

¹ NE#1 also documented evidence that the Complainant was not impaired, such as a normal horizontal gaze nystagmus and lack of convergence tests.



SPD policy prohibits biased policing, which it defines as “the different treatment of any person by officers motivated by any characteristic of protected classes under state, federal, and local laws as well other discernible personal characteristics of an individual.” SPD Policy 5.140-POL. This includes different treatment based on the race, gender, or other discernible personal characteristics of the subject. *See id.* Officers are forbidden from both, (i) making decisions or taking actions influenced by bias, and (ii) expressing any prejudice or derogatory comments concerning personal characteristics. *See* SPD Policy 5.140 POL-2.

This allegation is unfounded. OPA observed no indication that NE#1 engaged in bias-based policing. Instead, his actions appeared entirely motivated by objective evidence that the Complainant was driving while impaired. Moreover, NE#1 recorded both the Complainant and other involved driver as the same gender (female) and broad racial category (“Black or African American”). To the extent the Complainant was treated any differently due to her arrest history, this was due to the fact the Complainant had a prior DUI arrest within the past ten years, which could be relevant to the level of seriousness of the offense. *See, e.g.,* RCW 46.61.5055(4).

Accordingly, OPA recommends this allegation be Not Sustained – Unfounded (Expedited).

Recommended Finding: **Not Sustained - Unfounded (Expedited)**

Named Employee #1 - Allegation #2

5.001 – Standards and Duties 10. Employees Will Strive to be Professional

The Complainant alleged that NE#1 was unprofessional.

SPD Policy 5.001-POL-10 requires that SPD employees “strive to be professional.” The policy further instructs that “employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers” whether on or off duty. SPD Policy 5.001-POL-10.

This allegation is unfounded. As an initial matter, nothing in policy forbade NE#1 from conducting DRE tests without the presence of a female officer. Moreover, NE#1 explained the test procedure to the Complainant, who never requested a female officer. Finally, the interaction was fully recorded on BWV, in the presence of WO#1, and was done in a professional manner.

Accordingly, OPA recommends this allegation be Not Sustained – Unfounded (Expedited).

Recommended Finding: **Not Sustained - Unfounded (Expedited)**